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and Quintessa LLC d/b/a The Injury Help Network*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TERRY FABRICANT, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

SUNSET WEST LEGAL GROUP, PC
and QUINTESSA LLC d/b/a THE
INJURY HELP NETWORK,

Defendants.

Case No.: 2:24-cv-04264-FLA-MAA

Hon. Fernando L. Aenlle-Rocha

**DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR INJUNCTION
AND DAMAGES [D.E. 32]**

Defendants Sunset West Legal Group, PC ("Sunset") and Quintessa LLC d/b/a The Injury Help Network ("Quintessa") (collectively, "Defendants"), by and through the undersigned attorneys, hereby respond to the First Amended Complaint for Injunction and Damages (the "Amended Complaint") filed by Plaintiff, Terry Fabricant ("Plaintiff"), and state as follows:

I. INTRODUCTION

1
2 1. Paragraph 1 of the Amended Complaint consists of legal conclusions,
3 statements, and characterizations that are not allegations capable of admission or
4 denial. To the extent a response is required, Defendants deny such conclusions,
5 statements, and characterizations.

6 2. Defendants deny the allegations in Paragraph 2 of the Amended
7 Complaint.

8 3. Defendants admit that Plaintiff seeks to bring an action on behalf of a
9 proposed nationwide class of persons, but deny any actionable conduct Plaintiff
10 attributes to Defendants. Furthermore, Defendants are without knowledge or
11 information sufficient to form a belief as to the identity of the “Defendant” to which
12 Plaintiff refers in Paragraph 3, and thus seek a more definite statement so that
13 Defendants may respond accordingly. To the extent a response is required to
14 Plaintiff’s vague and ambiguous allegations in Paragraph 3 of the Amended
15 Complaint, Defendants deny such allegations.

II. PARTIES

16
17 4. Defendants admit the allegations in Paragraph 4 of the Amended
18 Complaint.

19 5. Defendants admit the allegations in Paragraph 5 of the Amended
20 Complaint.

21 6. Defendants admit that Quintessa is based in Oklahoma City,
22 Oklahoma, but denies the remainder of the allegations contained in Paragraph 6 of
23 the Amended Complaint.

III. JURISDICTION AND VENUE

24
25 7. Paragraph 7 of the Amended Complaint consists of legal conclusions,
26 statements, and characterizations that are not allegations capable of admission or
27 denial. To the extent a response is required, Defendants deny such conclusions,
28 statements, and characterizations.

1 response is required, Defendants deny the allegations in Paragraph 14 and demand
2 strict proof thereof.

3 15. Paragraph 15 of the Amended Complaint consists of legal conclusions,
4 statements, and characterizations that are not allegations capable of admission or
5 denial. To the extent a response is required, Defendants deny such conclusions,
6 statements, and characterizations.

7 16. Defendants are without knowledge or information sufficient to form a
8 belief as to the truth of the allegations in Paragraph 16 of the Amended Complaint,
9 particularly as Plaintiff has failed to allege his complete cellular telephone number.
10 Defendants therefore deny the allegations in Paragraph 16.

11 17. Defendants deny the allegations in Paragraph 17 of the Amended
12 Complaint.

13 18. Defendants deny the allegations in Paragraph 18 of the Amended
14 Complaint.

15 19. Defendants are without knowledge or information sufficient to form a
16 belief as to the truth of the allegations in Paragraph 19 of the Amended Complaint
17 and therefore deny such allegations.

18 20. Defendants are without knowledge or information sufficient to form a
19 belief as to the truth of the allegations in Paragraph 20 of the Amended Complaint
20 and therefore deny such allegations.

21 21. Defendants are without knowledge or information sufficient to form a
22 belief as to the truth of the allegations in Paragraph 21 of the Amended Complaint
23 and therefore deny such allegations.

24 22. Defendants deny the allegations in Paragraph 22 of the Amended
25 Complaint.

26 23. Defendants deny the allegations in Paragraph 23 of the Amended
27 Complaint.
28

1 24. Defendants deny the allegations in Paragraph 24 of the Amended
2 Complaint.

3 25. Defendants admit the allegations in Paragraph 25 of the Amended
4 Complaint.

5 26. Defendants deny the allegations in Paragraph 26 of the Amended
6 Complaint.

7 27. Defendants deny the allegations in Paragraph 27 of the Amended
8 Complaint.

9 28. Defendants deny the allegations in Paragraph 28 of the Amended
10 Complaint.

11 29. Defendants deny the allegations in Paragraph 29 of the Amended
12 Complaint.

13 30. Defendants deny the allegations in Paragraph 30 of the Amended
14 Complaint.

15 31. Defendants deny the allegations in Paragraph 31 of the Amended
16 Complaint.

17 32. Defendants deny the allegations in Paragraph 32 of the Amended
18 Complaint.

19 33. Defendants deny the allegations in Paragraph 33 of the Amended
20 Complaint.

21 34. Defendants deny the allegations in Paragraph 34 of the Amended
22 Complaint.

23 35. Defendants respond that the authority cited in Paragraph 35 of the
24 Amended Complaint may be evidence of its contents. However, to the extent a
25 response is required, Defendants deny the allegations in Paragraph 35 and demand
26 strict proof thereof.

27 36. Defendants respond that the unspecified authority cited in Paragraph 36
28 of the Amended Complaint may be evidence of its contents. However, to the extent

1 a response is required, Defendants deny the allegations in Paragraph 36 and demand
2 strict proof thereof.

3 37. Defendants respond that the authority cited in Paragraph 37 of the
4 Amended Complaint may be evidence of its contents. However, to the extent a
5 response is required, Defendants deny the allegations in Paragraph 37 and demand
6 strict proof thereof.

7 38. Defendants respond that the authority cited in Paragraph 38 of the
8 Amended Complaint may be evidence of its contents. However, to the extent a
9 response is required, Defendants deny the allegations in Paragraph 38 and demand
10 strict proof thereof.

11 39. Defendants deny the allegations in Paragraph 39 of the Amended
12 Complaint.

13 40. Defendants deny the allegations in Paragraph 40 of the Amended
14 Complaint.

15 41. Defendants deny the allegations in Paragraph 41 of the Amended
16 Complaint.

17 42. Defendants deny the allegations in Paragraph 42 of the Amended
18 Complaint.

19 43. Defendants deny the allegations in Paragraph 43 of the Amended
20 Complaint.

21 44. Defendants deny the allegations in Paragraph 44 of the Amended
22 Complaint.

23 45. Defendants deny the allegations in Paragraph 45 of the Amended
24 Complaint.

25 46. Defendants deny the allegations in Paragraph 46 of the Amended
26 Complaint.

27 47. Defendants deny the allegations in Paragraph 47 of the Amended
28 Complaint.

1 48. Defendants deny the allegations in Paragraph 48 of the Amended
2 Complaint.

3 49. Defendants deny the allegations in Paragraph 49 of the Amended
4 Complaint.

5 50. Defendants deny the allegations in Paragraph 50 of the Amended
6 Complaint.

7 51. Paragraph 51 of the Amended Complaint consists of legal conclusions,
8 statements, and characterizations that are not allegations capable of admission or
9 denial. To the extent a response is required, Defendants deny such conclusions,
10 statements, and characterizations.

11 52. Paragraph 52 of the Amended Complaint consists of legal conclusions,
12 statements, and characterizations that are not allegations capable of admission or
13 denial. To the extent a response is required, Defendants deny such conclusions,
14 statements, and characterizations.

15 53. Defendants deny the allegations in Paragraph 53 of the Amended
16 Complaint.

17 54. Defendants deny the allegations in Paragraph 54 of the Amended
18 Complaint.

19 55. Defendants deny the allegations in Paragraph 55 of the Amended
20 Complaint.

21 56. Defendants deny the allegations in Paragraph 56 of the Amended
22 Complaint.

23 57. Defendants deny the allegations in Paragraph 57 of the Amended
24 Complaint.

25 58. Defendants respond that the authority cited in Paragraph 58 of the
26 Amended Complaint may be evidence of its contents. However, to the extent a
27 response is required, Defendants deny the allegations in Paragraph 58 and demand
28 strict proof thereof.

1 59. Defendants are without knowledge or information sufficient to form a
2 belief as to the truth of the allegations in Paragraph 59 of the Amended Complaint
3 and therefore deny such allegations.

4 60. Defendants deny the allegations in Paragraph 60 of the Amended
5 Complaint.

6 61. Defendants deny the allegations in Paragraph 61 of the Amended
7 Complaint.

8 62. Defendants deny the allegations in Paragraph 63 of the Amended
9 Complaint.

10 **V. CLASS ACTION ALLEGATIONS**

11 63. Defendants admit that Plaintiff purports to bring this action as a class
12 action and attempts to define a nationwide class, but deny that any class is appropriate
13 or can be certified in this action.

14 64. Paragraph 64 of the Amended Complaint consists of legal conclusions,
15 statements, and characterizations that are not allegations capable of admission or
16 denial. To the extent a response is required, Defendants deny such conclusions,
17 statements, and characterizations.

18 65. Defendants deny the allegations in Paragraph 65 of the Amended
19 Complaint.

20 66. Defendants deny the allegations in Paragraph 66 of the Amended
21 Complaint.

22 67. Paragraph 67 of the Amended Complaint consists of legal conclusions,
23 statements, and characterizations that are not allegations capable of admission or
24 denial. To the extent a response is required, Defendants deny such conclusions,
25 statements, and characterizations.

26 68. Paragraph 68 of the Amended Complaint consists of legal conclusions,
27 statements, and characterizations that are not allegations capable of admission or
28

1 denial. To the extent a response is required, Defendants deny such conclusions,
2 statements, and characterizations.

3 69. Paragraph 69 of the Amended Complaint consists of legal conclusions,
4 statements, and characterizations that are not allegations capable of admission or
5 denial. To the extent a response is required, Defendants deny such conclusions,
6 statements, and characterizations.

7 70. Defendants deny the allegations in Paragraph 70 of the Amended
8 Complaint.

9 71. Defendants admit that Plaintiff seeks injunctive relief and money
10 damages, but deny that such relief is warranted.

11 72. Paragraph 72 (and its subparts) consists of legal conclusions, statements,
12 and characterizations that are not allegations capable of admission or denial. To the
13 extent a response is required, Defendants deny such conclusions, statements, and
14 characterizations in Paragraph 72 of the Amended Complaint.

15 73. Paragraph 73 of the Amended Complaint consists of legal conclusions,
16 statements, and characterizations that are not allegations capable of admission or
17 denial. To the extent a response is required, Defendants deny such conclusions,
18 statements, and characterizations.

19 74. Paragraph 74 of the Amended Complaint consists of legal conclusions,
20 statements, and characterizations that are not allegations capable of admission or
21 denial. To the extent a response is required, Defendants deny such conclusions,
22 statements, and characterizations.

23 75. Paragraph 75 of the Amended Complaint consists of legal conclusions,
24 statements, and characterizations that are not allegations capable of admission or
25 denial. To the extent a response is required, Defendants deny such conclusions,
26 statements, and characterizations.

27 76. Paragraph 76 of the Amended Complaint consists of legal conclusions,
28 statements, and characterizations that are not allegations capable of admission or

1 denial. To the extent a response is required, Defendants deny such conclusions,
2 statements, and characterizations.

3 77. Paragraph 77 of the Amended Complaint consists of legal conclusions,
4 statements, and characterizations that are not allegations capable of admission or
5 denial. To the extent a response is required, Defendants deny such conclusions,
6 statements, and characterizations.

7 **FIRST CAUSE OF ACTION**

8 78. Defendants incorporate their responses to Paragraphs 1 through 77 of
9 the Amended Complaint as if fully set forth herein.

10 79. Defendants deny the allegations in Paragraph 79 of the Amended
11 Complaint.

12 80. Defendants admit that Plaintiff seeks to impose liability on Defendants,
13 but deny any actionable conduct, deny violating the aforementioned statute, and deny
14 any remaining allegations in Paragraph 80 of the Amended Complaint.

15 81. Defendants deny the allegations in Paragraph 81 of the Amended
16 Complaint.

17 82. Paragraph 82 of the Amended Complaint consists of legal conclusions,
18 statements, and characterizations that are not allegations capable of admission or
19 denial. To the extent a response is required, Defendants deny such conclusions,
20 statements, and characterizations.

21 83. Defendants admit that Plaintiff seeks such injunctive relief, but deny any
22 actionable conduct, deny violating the aforementioned statute, and deny any
23 remaining allegations in Paragraph 83 of the Amended Complaint.

24 **PRAYER FOR RELIEF**

25 In response to the **WHEREFORE** clause following Paragraph 83 of the
26 Amended Complaint, including its subparts (A) through (G), Defendants admit that
27 Plaintiff seeks such relief but deny that Plaintiff is entitled to any relief whatsoever,
28 and respectfully request that this Court enter an order granting judgment in favor of

1 Defendants and dismissing Plaintiff's Amended Complaint in its entirety with
2 prejudice, together with attorney's fees, costs, and such other and further relief as
3 this Court deems just and proper.

4 As to any part of the Amended Complaint not specifically admitted, denied,
5 or discussed with respect to Defendants, Defendants hereby deny said allegations,
6 including, but not limited to, any allegations contained in the Amended Complaint's
7 preamble, headings, subheadings, and wherefore clause. Furthermore, any
8 averments in the Amended Complaint to which no responsive pleadings are capable
9 or required shall be deemed denied.

10 **FIRST AFFIRMATIVE DEFENSE**

11 Plaintiff fails to state a plausible claim upon which relief can be granted under
12 any theory of action because the factual allegations are incomplete and/or do not
13 state a claim for relief under the TCPA against Defendants.

14 **SECOND AFFIRMATIVE DEFENSE**

15 Plaintiff's damages, if any, and none being admitted, were not caused by
16 Defendants, but by another person or entity, including Plaintiff, for whom
17 Defendants are not responsible and over whose activities Defendants exercise no
18 control and/or have no right to control.

19 **THIRD AFFIRMATIVE DEFENSE**

20 Defendants are not vicariously or otherwise liable for the acts of third parties
21 making and/or initiating the complained-of telephone call(s) to Plaintiff. At all
22 relevant times, such third parties were not Defendants' agents and Defendants did
23 not exercise substantial control over their actions, if any.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 Plaintiff's claims are barred because Plaintiff did not suffer any concrete harm
26 or actual injury. Plaintiff and, if relevant, purported class members, did not suffer
27 any concrete harm separate and apart from a procedural violation of the TCPA, and
28 Plaintiff alleges bare procedural statutory violations divorced from any actual,

1 concrete injury-in-fact. Plaintiff and, if relevant, purported class members therefore
2 lack standing.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 Plaintiff's claims are barred by the doctrine of estoppel due to his and the
5 purported class members' consent, prior express invitation, or permission to be
6 called on his/their cellular and/or residential telephones.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 Plaintiff's claims are barred by his and the purported class members' consent,
9 prior express invitation, or permission to be called on his/their cellular and/or
10 residential telephones.

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 Plaintiff's claims are barred because Plaintiff and the purported class
13 members did not suffer any actual injury or damages.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 Plaintiff's claims are barred for failure to join necessary and indispensable
16 parties, including but not limited to, any third party that actually may have made or
17 may have initiated the telephone calls at issue.

18 **NINTH AFFIRMATIVE DEFENSE**

19 Plaintiff's claims for treble damages are barred because Defendants did not
20 engage in knowing or willful misconduct.

21 **TENTH AFFIRMATIVE DEFENSE**

22 Defendants state that to the extent any statute was violated as a result of a
23 purported revocation of consent from Plaintiff, Plaintiff's damages, if any, would be
24 limited to the number of purported calls or recordings that took place after Plaintiff
25 actually revoked his consent (to the extent he ever did) (and the same applies to any
26 purported class member).

27 **ELEVENTH AFFIRMATIVE DEFENSE**

28 Defendants complied with all applicable statutory, regulatory, and common

1 law requirements and accordingly, Plaintiff's claims are barred by Defendants'
2 compliance with all applicable State, Federal, and local laws and regulations.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 Defendants state that to the extent they engaged in any conduct which may
5 have violated any provision of the TCPA, such violation was unintentional,
6 accidental, and as a result of a bona fide error which occurred notwithstanding the
7 maintenance of procedures reasonably adapted to avoid such error and ensure
8 Defendants' compliance with all applicable statutory, regulatory, and common law
9 requirements. Additionally, Defendants raise their good faith compliance as a
10 defense to Plaintiff's claims for treble damages for alleged willing or knowing
11 violations of the TCPA.

12 **THIRTEENTH AFFIRMATIVE DEFENSE**

13 Plaintiff's claims are barred because the TCPA violates Defendants' First
14 Amendment right to free speech. Specifically, the TCPA improperly inhibits the
15 exercise of constitutionally protected speech.

16 **FOURTEENTH AFFIRMATIVE DEFENSE**

17 Plaintiff's claims are barred because the TCPA, in the context of a class
18 action, is violative of Defendants' constitutional rights under the Eighth Amendment
19 and its prohibition against excessive fines and cruel and unusual punishment.

20 **FIFTEENTH AFFIRMATIVE DEFENSE**

21 Maintenance of this action as a class action is inconsistent with the legislative
22 intent of the TCPA in that the United States Congress intended that claims under the
23 TCPA proceed as individual actions.

24 **SIXTEENTH AFFIRMATIVE DEFENSE**

25 Plaintiff's claims are barred by the doctrine of unclean hands due to his and
26 the purported class members' consent to be called on his/their cellular and/or
27 residential telephones. *See Institute of Cetacean Research v. Sea Shepherd*
28 *Conservation Soc.*, 725 F.3d 940, 947 (9th Cir. 2013).

1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 Plaintiff and the purported class members have failed to mitigate their
3 damages, if any, based in part on their failure to notify the alleged callers that the
4 alleged calls made to their cellular and/or residential telephone should cease.

5 **EIGHTEENTH AFFIRMATIVE DEFENSE**

6 Plaintiff's claims are barred by the doctrine of ratification due to Plaintiff's
7 and the purported class members' failure to timely notify the alleged callers that the
8 calls should cease.

9 **NINETEENTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claims are barred by the doctrines of laches and/or waiver for
11 Plaintiff's and the purported class members' failure to timely notify the alleged
12 callers that the calls allegedly made to their cellular and/or residential telephone(s)
13 should cease.

14 **TWENTIETH AFFIRMATIVE DEFENSE**

15 Plaintiff's claims are barred by the doctrine of *in pari delicto*. At all relevant
16 times Plaintiff and the purported class members consented to and/or ratified the
17 telephone calls complained of in the Amended Complaint, including calls to their
18 cellular and/or residential telephone numbers.

19 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

20 Plaintiff's claims are barred because his registration on the National Do-Not-
21 Call registry is invalid as a result of holding his cellular telephone number out to the
22 public as a business telephone number.

23 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

24 Plaintiff's claims are barred because the cellular telephone number which he
25 claims was called in violation of 47 U.S.C. § 227(c) was not a residential telephone
26 number or line.

1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2 Plaintiff's claims are barred because the callers obtained consent, prior
3 express invitation or permission, had an established business relationship, or had a
4 personal relationship with the Plaintiff and the purported class members.

5 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

6 Plaintiff's claims are barred by the exceptions provided under the TCPA.

7 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

8 Plaintiff lacks standing to assert the claims and allegations set forth in the
9 Amended Complaint because, among other reasons, Defendants did not place any
10 calls to Plaintiff's telephone phone number, and an individual other than Plaintiff
11 purportedly acted on behalf of Plaintiff to create or manufacture these alleged
12 interactions, calls, facts and claims.

13 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

14 Plaintiff's suit and the claims of any purported class member are barred to the
15 extent they agreed to arbitrate the asserted claim(s) against Defendants.

16 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

17 Plaintiff's class action suit and the claims of any purported class member are
18 barred to the extent they agreed to waive any participation in a class, including as to
19 the asserted claim(s) against Defendants.

20 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

21 Plaintiff's claims and claims of purported class members are barred because,
22 pursuant to Federal Communication Commission guidance, Defendants were
23 entitled to reasonably rely on prior express written consent containing Plaintiff's and
24 purported class members' telephone numbers until Defendants were notified that the
25 number was wrong or reassigned. Plaintiff never put Defendants on notice that he
26 was not the individual who provided prior express written consent using his
27 telephone number.

1 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

2 Plaintiff's claims are barred due to his use of a pseudonym, an alias and an
3 "employee" (another person, individual entirely) to fraudulently invite the
4 communications he now alleges are TCPA violations.

5 **THIRTIETH AFFIRMATIVE DEFENSE**

6 As a separate and alternative defense, Plaintiff's Amended Complaint does
7 not describe the claims made against Defendants with sufficient particularity to
8 enable Defendants to determine what additional defenses they may have in response
9 to the Amended Complaint; Defendants therefore reserve their right to assert any
10 additional defenses which may be applicable once the precise nature of the
11 underlying matters is pleaded or otherwise ascertained through discovery,
12 investigation, or otherwise.

13
14 **RESERVATION OF RIGHTS**

15 Defendants reserve the right to amend their Answer and/or Affirmative
16 Defenses up and through the time of trial upon discovery of additional information
17 or evidence, or as justice so requires.

18
19 **WHEREFORE**, having fully answered or otherwise responded to the
20 allegations contained in the First Amended Complaint for Injunction and Damages
21 filed by Plaintiff Terry Fabricant, Defendants Sunset West Legal Group, PC and
22 Quintessa LLC respectfully request this Court to enter judgment as follows: (1) that
23 Plaintiff takes nothing by virtue of the Amended Complaint and that this action be
24 dismissed with prejudice in its entirety; (2) that judgment be rendered in favor of
25 Defendants; (3) that attorneys' fees and costs incurred in this action be awarded to
26 Defendants to the greatest extent permitted by applicable law; and (4) that
27 Defendants be awarded such further and other relief as this Court deems just and
28 proper.

1 Dated: August 15, 2024

Respectfully Submitted,

2 **GREENSPOON MARDER LLP**

3
4 /s/ Jeffrey Gilbert

Sharon A. Urias

5 Jeffrey Gilbert (*admitted pro hac vice*)

6 *Attorneys for Defendants Sunset West*

7 *Legal Group, PC and Quintessa LLC d/b/a*

8 *The Injury Help Network*

9
10
11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on August 15, 2024, I electronically transmitted the
13 attached document to the Clerk's Office using the CM/ECF System for filing and
14 transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.
15

16 /s/ Jeffrey Gilbert